Toffoloni v. LFP Publishing Group, LLC

Doc. 73 Att. 6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, as Administrator and Personal Representative of the ESTATE OF NANCY E. BENOIT, Plaintiff, vs. **LFP PUBLISHING GROUP, LLC,** d/b/a Hustler Magazine, et al, Defendant.	)))))))))))))	CASE NO. 1:08-cv-00421-TWT

BRIEF IN SUPPORT OF DEFENDANT'S MOTION
FOR PROTECTIVE ORDER

EXHIBIT E

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

MAUREEN TOFFOLONI, as Administrarix and Personal Representative of the ESTATE OF NANCY E. BENOIT, Plaintiff, v. LFP PUBLISHING GROUP, LLC, d/b/a Hustler Magazine, MARK SAMANSKY, an Individual, and other distributors and sellers of, Hustler Magazine, as Defendants X, Y, and Z, Defendants.	)	CIVIL ACTION FILE NO. 1:08-CV-0421-TWT

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT, LFP PUBLISHING GROUP, LLC

Plaintiff, Maureen Toffoloni, as Administratrix and Personal Representative of the Estate of Nancy E. Benoit, pursuant to Fed. R. Civ. P. Rule 34, that thirty (30) days from the date of this Request, you produce for inspection and copying by Plaintiff, at the offices of Hallman & Wingate, LLC, 166 Anderson Street, S.E., Suite 210, Marietta, Georgia, 30066, at 10:00 a.m., the following documents in your custody, control, or possession (or you may deposit in the United States mail copies of the requested documents correctly addressed to Plaintiff's attorneys, upon receipt of which Plaintiff will promptly reimburse you for photocopying charges):

I. DEFINITIONS

Unless the context specifically indicates otherwise, the terms listed below have the following meaning:

(a) Document. As used herein, "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated in the custody, control, or possession of the Defendant or of which the Defendant has knowledge, including, without limitation, whether in draft or final, letters, correspondence, invoices, contracts, agreements, purchase orders, memoranda, tapes, stenographical and handwritten notes, bulletins, circulars, pamphlets, studies, reports, notices, diaries, summaries, books, messages, instructions, pictures, photographic slides, film, microfilm, graphs, charts, statistical compilations, magnetic discs, records and tapes or other media, computer card tapes, printouts, reports and other machine-readable records and data, sound recordings, and every draft or copy of a document which is not identical to the original or which draft or copy contains any commentary or notation whatsoever that does not appear on the original.

(b) Person. As used herein, "person" shall mean a natural person or an artificial person, including partnerships, corporations, proprietorships, unincorporated associations, governmental bodies, or any other legally cognizable entities.

(c) Date. As used herein, "date" shall mean the exact day, month, and year, if known to the Defendant, or, if the exact date is not known, the best available approximation.

(d) Identify. As used herein, "identify," when used in reference to:

(1) an individual, shall mean to state his full name, present or last known residential address (designating which), and present or last known position or business affiliation (designating which), job title, employment address, business and residence telephone numbers;

(2) a firm, partnership, corporation, proprietorship, association, or other organization or entity, shall mean to state its full name and present or last known address and telephone number (designating which), the legal form of such entity or organization and the identity of its chief executive officer;

(3) a document, shall mean to state the title (if any), the date, author, sender, recipient, the identity of persons signing it, type of document (i.e., a

letter, memorandum, book, telegram, chart, etc.) or some other means of identifying it, the names of the persons known to have seen the document or to have received copies, and its present location or custodian;

(4) an oral communication, shall mean the date, subject matter, communicator, communicatee, nature of the communication, whether it was recorded or otherwise memorialized, and the identity of any witnesses thereto.

(e) "Defendant" or "you". As used herein, "Defendant" or "you" shall mean the Defendant, LFP Publishing Group, LLC, d/b/a Hustler Magazine, and any officer or employee thereof, or any subsidiary or parent company thereof.

II. INSTRUCTIONS

Objections Based on Privilege. In the event that any documents or things requested herein are withheld under a claim of privilege, please provide the following information with respect to each such document or thing:

(a) The type of document or thing, its general subject matter, and the place and approximate date it was prepared or created;

(b) The name and title of each person who prepared or created the document or thing and the name and title of each other person who has received or examined the document or thing or a copy thereof;

(c) The type of privilege claimed;

(d) A statement of the circumstances which bear on whether or not the claim or privilege is appropriate and whether the privilege that is claimed should extend to all or just to part of the document or thing;

(e) The number of each specific document request to which the withheld document is responsive; and

(f) If privilege is claimed as to any document otherwise covered by this request for production, Plaintiff requests that each document as to which privilege is claimed be identified in a manner such that the court may determine whether or not such document is entitled to be accorded privileged status.

Documents No Longer in Possession. If any document within the scope of a document request was at one time in existence and under Defendant's possession, custody, or control, but has been lost, discarded, or destroyed, or has been removed from Defendant's possession, custody, or control, then with respect to each such document:

(a) Identify and describe such document by date, title, and type of document;

(b) State when each such document was most recently in the possession or subject to the control of Defendant and what disposition was made of such document, including an identification of the person, if any, presently in possession or control of such document;

(c) State when such document was transferred or destroyed, identify the person who transferred or destroyed such document, the persons who authorized or directed that the document be transferred or destroyed or having knowledge of its transfer or destruction, and state the reason such document was transferred or destroyed; and

(d) Identify all persons having knowledge of the contents thereof.

Organization of Documents. All documents produced in response to this request shall be organized and labeled to correspond with the number of the document request to which the documents are responsive.

III. REQUESTS FOR PRODUCTION

(1)

All documents, identification of which is requested, or which otherwise reflect, refer to, evidence, comment upon, or relate in any way to the information requested in Plaintiff's First Interrogatories to Defendants.

(2)

Profit and loss and/or operating statements for LFP Publishing Group, LLC for each month in calendar years 2006, 2007, 2008, and 2009 to date.

(3)

Profit and loss and/or operating statements for L.F.P., Inc. for each month in calendar years 2006, 2007, 2008, and 2009 to date.

(4)

Profit and loss and/or operating statements for LE Publishing Advisors, LLC for each month in calendar years 2006, 2007, 2008, and 2009 to date.

(5)

A statement of net worth or financial statement for LFP Publishing Group, LLC d/b/a "Hustler Magazine" for the years 2006, 2007, 2008, 2009, to date.

(6)

A statement of net worth or financial statement for L.F.P., Inc. for the years 2006, 2007, 2008, 2009, to date.

(7)

A statement of net worth or financial statement for LE Publishing Advisors, LLC for the years 2006, 2007, 2008, 2009, to date.

(8)

Documents which reflect the financial and/or other compensation paid by Defendant LFP Publishing Group, LLC or any related or affiliated company for the 50 highest paid models, celebrities or private individuals for posing for nude images of said person, published in each edition of Hustler Magazine for 2006, 2007, 2008, and 2009.

(9)

Produce an original of the March 2008 edition of Hustler Magazine as it was offered to the public. Plaintiff will reimburse Defendant the actual cost of this item.

(10)

Produce an original of each edition of Hustler Magazine for 2007 and 2008, as they were offered to the public. Plaintiff will reimburse Defendant the actual cost of these items.

(11)

Produce all documents which reflect the amount of money and/or other things of value paid by Defendant to Mark Samansky for the images of Nancy E. Benoit.

(12)

Produce all documents, which reflect the amount of money and/or other things of value received by Defendant for its use of the images of Nancy E. Benoit in all media.

(13)

Produce all documents which reflect the total number of Hustler Magazines produced and the total number of Hustler Magazines sold worldwide for each month in calendar years 2006, 2007, 2008 and 2009, to date.

Respectfully submitted October 16, 2009.

RICHARD P. DECKER
State Bar of Georgia #215600

For HALLMAN & WINGATE, LLC
Attorneys for Plaintiff

166 Anderson Street, S.E.
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Marietta, Georgia 30060
(404) 588-2530

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

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CERTIFICATE OF SERVICE

This is to certify that on October 16, 2009, I have served the following counsel in the foregoing matter with Plaintiff's First Request for Production of Documents to Defendant LFP Publishing Group, LLC by placing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to:

Barry J. Armstrong, Esq.
James Clifton Rawls, Esq.
S. Derek Bauer, Esq.
Darrell Jay Solomon, Esq.
McKenna, Long & Aldridge
303 Peachtree Street, N.E.
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